

MINUTES

INDIANA STATE BOARD OF DENTAL EXAMINERS

MAY 2, 2008

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Burns called the meeting to order at 9:00 a.m. in the Professional Licensing Agency Conference Room W064, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 15-5-1.1-6(c).

Board Members Present:

Jill Burns, D.D.S., President
Laverne Whitmore, L.D.H. B.S., Vice President
Clance LaTurner, Consumer Member
Galen Williams, D.D.S., Secretary
Richard T. Newton, II, D.D.S.
Charles Heape, D.D.S.
Theodore Rokita, D.D.S.
Philip Catey, D.D.S.
Steven Hollar, D.D.S.
Matthew Miller, D.D.S.

Board Members Absent:

Gary Haller, D.D.S.

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Kristine Yarde, Assistant Board Director, Professional Licensing Agency
Liz Brown, Deputy Attorney General, Office of the Attorney General

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda, as amended.

WILLIAMS/LATURNER
Motion carried 10-0-0

III. ADOPTION OF THE MINUTES FROM THE APRIL 4, 2008 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes of the April 4, 2008 meeting of the Board.

MILLER/WILLIAMS
Motion carried 10-0-0

IV. APPEARANCES

A. PROBATIONARY

1. **State of Indiana v. Daniel J. Fink, D.D.S., License No. 12007602A**
Administrative Cause No. 2006 DB 0006

Dr. Fink appeared before the Board, as requested, regarding his probationary status. He advised there has been no change in his address and he is not taking any medications. Dr. Fink asked the Board how he can get his patient charts from his previous office. He told the Board he believed his patients were being given their original file instead of a copy. The Board advised him to seek legal advice from an attorney and if his former office is mishandling patient files he can file a complaint with the Attorney General's Office. Dr. Fink reported his job offer in Illinois fell through due to the National Practitioner Data Bank report and the number of terms a supervisor must comply with. Dr. Fink explained he has another meeting in Evansville, Indiana with a doctor who may practice with him. He expressed frustration with how his Probation Order is written and asked the Board if the terms can be reduced. He stated that it is too prohibitive and if the deal in Evansville does not work out then he has exhausted his options. The Board stated he agreed to his Probation Order and the terms cannot change for five (5) years. The Board suggested he begin looking into other avenues of employment. Dr. Fink stated he has but it is difficult for someone his age and with his disability. He only agreed to the probation order because he did not have the money to fight it. The Board provided Dr. Fink with another copy of his Probationary Order.

2. State of Indiana v. Trevor Treasure, D.D.S., License No. 12010719A
Administrative Cause No. 2007 ISDB 0002

Dr. Treasure appeared before the Board, as requested, regarding his ongoing probationary status. Dr. Treasure told the Board he has been contacted by the DEA regarding the reactivation of his registration and he asked the Board's permission to seek reinstatement of his Controlled Substance Registration in order to obtain his DEA permit. Dr. Treasure explained it is hard for him to do his job without the use of controlled substances because he cannot supervise the residents. He stated he voluntarily surrendered his DEA two years ago. The Board stated he may petition the Board for a hearing in which to modify his probationary order. This will be set for the June 6, 2008 meeting. The Board noted that Dr. Treasure is doing well in his compliance with the Probationary Order.

B. APPLICATION

C. RENEWAL

1. Tammy M. (Hurt) Bacon, L.D.H., License No. 13005564A

Ms. Bacon appeared before the Board, as requested, regarding the application for renewal of her dental hygiene license. On her application she answered "yes" to a question asking, "Since you last renewed, have you been convicted of or pled guilty to a violation of a federal or state law or are criminal charges pending?" Ms. Bacon entered into a plea agreement and was convicted on July 23, 2007 of Operating a Vehicle While Intoxicated Endangering a Person, a Class A misdemeanor. The plea agreement included a Habitual Substance Offender Sentence Enhancement. Her sentence includes jail time, one and one-half years of electronically monitored home detention, probation following home detention, suspension of her driver's license, completion of a drug/alcohol program and related requirements, community service, and payment of fines and costs. She is currently under electronic monitoring and may only leave for work.

She was granted permission to appear at the meeting today. Ms. Bacon stated that she has completed alcohol classes in the fall of 2007 and currently sees holistic doctors, an acupuncturist, and takes Scientology classes to try and help her deal with her issues. The Board noted that Ms. Bacon was granted a probationary license in August of 2004 based upon reporting at that time she had a history of abuse and arrests involving drugs and alcohol. Ms. Bacon's latest OWI occurred just after she was released from the Board's Probation Order dated March 16, 2006. Ms. Bacon stated she went out with a girlfriend for a few drinks and got pulled over driving home. She stated she is not working on a regular basis but fills in at a few doctor's office and volunteers at the Genessaret Clinic one day a month. She expressed remorse and feels she is already enduring a heavy punishment and would like to keep her license. Ms. Bacon agreed to placing her license on probation with terms and conditions.

Board Action: A motion was made and seconded to renew Ms. Bacon's dental hygiene license on Probation with the following terms and conditions:

1. The Practitioner's license as a dental hygienist is renewed and placed on indefinite probation.
2. The Practitioner shall enroll and sign a contract with a wellness program approved by the Board within thirty (30) days of the date of this decision.
3. The Practitioner shall appear in person before the Board at each monthly Board meeting.
4. The Practitioner may petition to have the frequency of personal appearances before the Board reduced from monthly to quarterly no earlier than one (1) year from the date of this decision.
5. The Practitioner may petition to have probation withdrawn no earlier than the next license renewal cycle.
6. The failure of the Practitioner to comply with the requirements of probation may subject her to a show cause hearing before the Board and the imposition of further sanctions.

WILLIAMS/MILLER

Motion carried 9-0-1

Ms. Whitmore, L.D.H., B.S. abstained

2. Richard Bruner, D.D.S., License No. 12010031A

Dr. Bruner failed to appear before the Board, as requested, regarding his application for renewal of his dental license. Dr. Bruner responded "Yes" to the following questions on his renewal:

1. Since you last renewed, has any health profession license, certificate, registration, or permit you hold or have held been disciplined or are formal charges pending?"
2. Since you last renewed, have you been convicted of or pled guilty to a violation of a federal or state law or are criminal charges pending?
3. Since you last renewed, have you been denied staff membership or privileges in any hospital or clinic or have staff membership or privileges been revoked, suspended, or subject to any restriction, probation, or other type of discipline?

Dr. Bruner's dental license in the state of Ohio is currently under suspension. On September 14, 2005, he pled guilty to criminal charges of a Misdemeanor 4th

Degree – Disorderly Conduct. Dr. Bruner appealed the decision of the Ohio Dental Board in the Court of Common Pleas on September 8, 2006. On October 2, 2007 the Court denied his appeal.

Dr. Bruner failed to report the initial actions of the Ohio Dental Board to the Board at the time of his renewal in 2006.

Board Action: After reviewing all documentation submitted, a motion was made and seconded to deny Dr. Bruner's license renewal based upon the disciplinary action taken by the Ohio Dental Board and the conviction.

HOLLAR/WILLIAMS
Motion carried 10-0-0

3. Richard E. Workman, D.D.S., License No. 12010037A

Dr. Workman appeared before the Board, as requested, regarding his application for renewal of his dental license. On the application he answered "yes" to a question asking, "Since you last renewed, has any health profession license, certificate, registration, or permit you hold or have held been disciplined or are formal charges pending?" Dr. Workman explained in August of 2006 his Probation Order in Missouri was extended. The website which lists the services the group performs did not include a disclaimer required under Missouri law. The procedures were gum therapy and root canals. Dr. Workman failed to add a disclaimer required under Missouri law which states that do not employ a Prosthodontist for denture services or Periodontists for the gum disease. The Board asked why he was originally on probation in Missouri. Dr. Workman told the Board everything began in Iowa when he hired a dentist for one of his practices. The dentist did not have any complaints or lawsuits but an inspection of his work showed that he needed additional training and help. Dr. Workman stated the dentist obtained additional training and hired another doctor to work with him. The new dentist reported that the other doctor's work was inadequate and Dr. Workman terminated him after two years of employment. The dentist filed a wrongful termination suit against Dr. Workman as the owner of Heartland Dental. Dr. Workman stated that he was unaware of an Iowa law that required him to report substandard care by a practitioner to the Board. Dr. Workman failed to report this doctor to the Board and agreed to a Probation Order in Iowa in May 2004. Upon having this disciplinary action he failed to report it to Missouri and Michigan where he holds a license. Missouri disciplined him for not notifying them of action taken against his license in another state by placing him on three year probation in June 2005. When the website infraction occurred in Missouri his probation was extended from three years to five years. The Board asked in what states he holds a license. Dr. Workman listed Iowa, Missouri, Indiana, Ohio, and Michigan. Dr. Workman explained he does not see patients but maintains licenses in these states so that he can be involved with the practices he owns and communicate with the dentists in those offices as a peer. Dr. Workman stated he accepts the responsibility that comes with employing these dentists but ultimately they are accountable to the State Dental Board and responsible for the quality of care they are providing. He stated that he does have some doctors who visit dentists in his offices and provide some oversight. The Board questioned how he knows that the dentists he employs are competent. Dr. Workman advised they are competent if the state grants them a license and he accepts whatever responsibility is his if a dentist in his practice should violate the law. The Board asked Dr. Workman about a complaint against him that was received by the Indiana Consumer Complaints Division of the Attorney General's Office. Dr. Workman presented a letter verifying that

complaint has been investigated and closed by their office. The Board expressed concern about his ability to hold so many licenses and stay compliant with the laws in those states. Per the Board's written request Dr. Workman presented the Board with copies of his continuing education certificates showing he has met Indiana's requirements thus far. Dr. Workman stated he does not have any problem with remaining compliant with all states he is currently licensed. Most of his issues were due to not reporting the substandard care in Iowa and then failing to report that action taken to Missouri and Michigan. The Board asked if he was on probation anywhere else. Dr. Workman was not sure if he was still on probation in Michigan because he thought that was only for six (6) months. He believed his probation in Iowa had ended as well.

Board Action: A motion was made and seconded to renew Dr. Workman's dental license.

HOLLAR/WILLIAMS
Motion carried 10-0-0

4. Emery John Spisak, D.D.S., License No. 12006332A

Dr. Spisak appeared before the Board, as requested, regarding his renewal application for his dental license. Dr. Spisak was accompanied by Counsel, Kathleen Kilar, and his office manager. Dr. Spisak's renewal was submitted online and all questions were answered "no". The Board told him a malpractice action was reported to them by the National Practitioner Data Bank on March 21, 2007 showing a payment of \$15,000. Dr. Spisak's office manager explained she completed his renewal online and assumed the answer was no to all questions. The Board told her the responsibility ultimately lies with Dr. Spisak because it is his license. Ms. Kilar told the Board a malpractice claim was made but there was never any suit filed with the Department of Insurance, Patient Compensation or state court. A payment was made by the insurance company before the claim ever went before a peer review panel and their understanding of the question was that the correct answer was "no". The Board asked Dr. Spisak for copies of his continuing education. Dr. Spisak stated he was unable to complete them because of health problems and surgery. Ms. Kilar told the Board Dr. Spisak is prepared to get all twenty continuing education hours completed within ninety (90) days.

Board Action: A motion was made and seconded to renew Dr. Spisak's license. The license is granted on a conditional status for a period of ninety (90) days. Dr. Spisak will be required to complete twenty (20) hours of continuing education and pay a fine of \$1,000.

NEWTON/LaTURNER
Motion carried 8-1-1
Dr. Williams abstained
Dr. Hollar dissented

V. ADMINISTRATIVE HEARINGS

1. Michael Edward Bajza, D.D.S., License No. 12009652A

Administrative Cause No. 2008 ISDB 0003

Re: Petition for Review of the Board's Denial of Petitioner's Application for Renewal of License.

Parties and Counsel Present:

Respondent was present and was represented by Counsel David Jensen
Mark Mader, Deputy Attorney General for the State of Indiana
Felicia Warren, Court Reporter

Participating Board Members:

Dr. Burns (Hearing Officer)
Ms. Whitmore, L.D.H., B.S.
Dr. Williams
Ms. LaTurner
Dr. Newton
Dr. Miller
Dr. Hollar
Dr. Catey
Dr. Heape
Dr. Rokita

*Dr. Burns noted for the record that she is recusing herself.

Case Summary: On April 17, 2008 Dr. Bajza's license renewal was denied by the Board. Dr. Bajza appealed the decision of the denial and this matter was set for hearing. The Practitioner applied for renewal of his license to practice dentistry on January 8, 2008, for the two (2) year renewal term beginning March 1, 2008. The Practitioner answered "no" to all questions on the application:

- i. *Since you last renewed, has any professional license, certificate, registration, or permit you hold or have held been disciplined or are formal charges pending?*
- ii. *Since you last renewed, have you been denied a license, certificate, registration, or permit in any state?*
- iii. *Since you last renewed, have you been denied a license, certificate, registration, or permit in any state?*
- iii. *Since you last renewed, have you had a malpractice judgment against you or settled any malpractice action?*
- iv. *Since you last renewed, have you been denied staff membership or privileges in any hospital or health care facility or have staff membership or privileges been revoked, suspended, or subject to any restriction, probation, or other type of discipline?*

The Board requested that the Practitioner make a personal appearance before the Board at its meeting on April 4, 2008, to further discuss his application for renewal. During the personal appearance the Board questioned the Practitioner about his "no" responses to the questions on the renewal application and reviewed the previous actions taken by the Board with respect to his license as noted above. On July 9, 2007 the Board issued an order revoking the Respondent's license which prohibits him from reapplying for a new license for seven years. Respondent's Counsel reminded the Board that a verified petition for judicial review was filed with the Lake Circuit Court on July 25, 2007 and a temporary stay of the revocation was ordered by the court. Since that time the Respondent has been allowed to practice as a result of the stay and he submitted a renewal for his active license online in January 2008 having paid the fee and completed the required amount of continuing education. Mr. Jensen told the Board that all briefs have been filed with the court in a timely manner to expedite the judicial review but the State has filed motions to dismiss and motions to strike which have slowed the process down. Mr. Jensen noted the Board's denial of the Respondent's license renewal at the last board meeting held April 4, 2008 was due to their initial ruling revoking the Respondent's license. Mr. Jensen noted the Board should maintain the status quo and allow the Respondent to practice until the judicial review is completed. The State argued

that the revocation of the Respondent's license and the renewal of his license are two parallel issues. The former revocation action has been permitted a stay pending judicial review but the latter renewal denial is not protected by the court ordered stay. The State noted the Board denied the Respondent's renewal because he failed to answer "yes" to any of the questions on the renewal application pertaining to disciplinary action that has been taken since he last renewed. Mr. Mader further stated that it is the Respondent's burden to convince the Board that they made a mistake when they denied his renewal and he does not believe that burden has been met.

Board Action: A motion was made and seconded to uphold the previous decision and deny the renewal of the Respondent's license based upon the following:

1. The Board took disciplinary action on July 9, 2007, under Indiana Code 25-1-9 to permanently revoke the Practitioner's Indiana dental license.
2. The Board's order on July 9, 2007, was the final disposition of the disciplinary complaint filed against the Practitioner on December 5, 2005, and the final disposition of the Practitioner's appeal of the denial of his renewal application on March 3, 2006.
3. The Practitioner's dental license has been revoked by the Board.
4. Pursuant to Indiana Code 25-1-9-12, the Board may not reinstate a license that has been revoked under IC 25-1-9. An individual whose license has been revoked may not apply for a new license until seven (7) years after the date of revocation.
5. The Practitioner was denied renewal of his dental license on March 3, 2006, for the two (2) year renewal term beginning March 1, 2006, and he timely filed an appeal.
6. Pursuant to Indiana Code 4-21.5-3-4(d), the Practitioner's existing license from the prior licensing period did not expire until the Board's final disposition of his appeal.
7. The Practitioner's prior existing license expired on July 9, 2007, upon the Board's issuance of a final order disposing of his appeal.
8. The Practitioner does not have an existing dental license.
9. For the above reasons, the Practitioner's application for renewal of a license to practice dentistry in Indiana is denied.

WILLIAMS/HOLLAR
Motion carried 9-0-1
Dr. Burns abstained

VI. SETTLEMENT AGREEMENTS

There were no settlement agreements before the Board.

VII. NOTICE OF PROPOSED DEFAULT

There were no Notices of Proposed Default before the Board.

VIII. OLD/NEW BUSINESS

- A. Ms. Vaught asked the Board if a licensed dental hygienist can apply the oral topical anesthetic Oraquix and the Board advised her that a dental hygienist may apply at the direction of the dentist.

IX. DISCUSSION

- A. Dr. Hollar asked the Board a question on behalf of a colleague who has used the NOMAD portable x-ray units while serving in Iraq. Based upon his positive experiences using the NOBAD, he purchased one to use at his practice but rule 410 IAC 5-6.1 states that tube housing shall not be handheld. The Board advised Dr. Hollar to have his colleague take the matter up with the Board of Health because that is their law and would not fall under the dental board.
- B. Ms. Whitmore noted that an error was printed in the IDA journal because it incorrectly states that dental hygienists need twenty hours of continuing education for renewal of their license. She would like it to be corrected to state that dental hygienists need fourteen hours of continuing education.

X. APPLICATION REVIEW

A. Endorsement

1. Bruce A. Hull, D.D.S.

The Board reviewed the application file for licensure by endorsement of Bruce Hull, D.D.S. Dr. Hull is a 1977 graduate of Ohio State University. He has passed National Board Part I and II in 1976 and the NERBS in 1977. He is currently licensed in the state of Ohio and an inactive license in the state of Pennsylvania. On his application he answered "yes" to question 4b asking, "Have you ever been convicted of, pled guilty or nolo contendere to any offense, misdemeanor or felony in any state?" In a written statement he informed the Board that in March 2007 he entered into a plea agreement for an amended charge of falsification after originally being charged with Obstruction of Official Business related to a speeding violation in Marysville, Ohio. Dr. Hull was required to pay a fine of \$500 and costs. Thirty days in Tri-County Jail of which 27 days were suspended and placed on probation for 3 years, with the stipulation that he give the court notice of his current address, until the term of probation expires. All requirements of the court have been completed.

Board Action: A motion was made and seconded to grant Dr. Hull a license upon passing the law examination.

CATEY/WILLIAMS
Motion carried 10-0-0

2. Desiree Dal Pra Dech, L.D.H.

The Board reviewed the additional information requested at the April 2, 2008 meeting. The information showed the dates of employment for Ms. Dech in Kansas and that she did not practice as a dental hygienist without a valid license. Ms. Dech is a 1992 graduate from Indiana University Northwest. She passed National Boards in May 1992 and completed the Indiana State Board Examination in June of 1992. Ms. Dech's original license expired March 1, 1998. Ms. Dech was required to reapply by endorsement for licensure. On her application she answered "yes" to question #3 asking, "Are you now, or have you ever been treated for drug or alcohol abuse?" She also answered "yes" to question #4b. asking, "Have you ever been convicted of, pled guilty or nolo contendere to any offense, misdemeanor or felony in any state?" Ms. Dech explained to the Board she moved to Kansas with a boyfriend and was feeling lonely so she began drinking. She realized that she was becoming dependent

upon alcohol and in 2000 checked into a rehabilitation center for 28 days. She stated she maintained her sobriety for approximately six months but did not follow all of the post-treatment recommendations and relapsed. Ms. Dech told the Board she pled guilty to a DUI in 2003 and her sobriety date is December 3, 2003. As a result of the DUI she spent two days in jail and completed one year of probation. She currently attends AA meetings and works with a sponsor. She expressed her commitment to her sobriety. The Board asked if any of the other states she is licensed in have asked her to appear regarding the DUI. Ms. Dech stated that no states have asked her appear and when she applied for her Missouri license they were aware of her conviction. The Board asked about where she last worked in Kansas and when she stopped working there. They explained that her written work history says she was practicing in 2006 but her Kansas license verification shows that her license expired December 1, 2005. Ms. Dech said she must have made an error because she would not have practiced on an expired license and offered to get a letter from the Deer Creek Family Dental Care Office attesting to her employment dates.

Action: A motion was made and seconded to grant a dental hygiene license to Ms. Dech upon passing the law examination.

HOLLAR/ROKITA
Motion carried 10-0-0

B. Examination

There were no examination applications for the Board to review.

C. Anesthesia and Sedation Permits

There were no anesthesia and sedation permits.

D. Dental Intern Permit

There were no dental intern permit applications to review.

E. Mobile Dental Facility

1. Mobile Care 2U, LLC

The Board reviewed the application file for registration of the mobile dental facility. The licensed personnel would be Robert Caird, DDS who is located in Greenfield, Indiana. The Board determined that no letters of support were included and their emergency contact protocol was unacceptable and should be set up directly with a local dentist.

Board Action: A motion was made and seconded to deny the application for Mobile Care 2U, LLC.

MILLER/NEWTON
Motion carried 10-0-0

F. Professional Corporations

There were no professional corporation applications to review.

XI. PROBATIONARY REPORT

A. Penelope Dunlap, D.D.S.

Dr. Dunlap's monitoring of practice report for April 2008 and community service report was reviewed and accepted.

B. James W. Cahillane, D.D.S.

Dr. Cahillane's report from the Indiana Dental Well-Being Program for April 2008 was reviewed and accepted.

C. Jim D. Frankos, D.D.S.

Dr. Frankos' report from the Indiana Dental Well-Being Program for April 2008 was reviewed and accepted. Dr. Frankos is scheduled for an administrative hearing on June 6th for the Board to consider the lift of his probation.

D. Christopher Leonard, D.D.S.

Dr. Leonard's report from the Indiana Dental Well-Being Program for April 2008 was reviewed and accepted. His worksite monitor report from Jerry Hickman, DDS has not been received since February 2008. The Board requested that a reminder letter be sent to Dr. Leonard advising him to submit the required report. Dr. Leonard's next appearance is scheduled for July 11, 2008.

E. Teresa Michelle McCrady, D.D.S.

Dr. McCrady's report from the Indiana Dental Well-Being Program for April 2008 and worksite monitor, Charles Miller, DDS, were reviewed and accepted. Dr. McCrady's next appearance is scheduled for June 6, 2008.

F. Bland Pope Walker, D.D.S.

Dr. Walker's report the Indiana Dental Well-Being Program for April 2008 was reviewed and accepted.

XII. CONTINUING EDUCATION

A. Institute for Natural Resources

Board Action: A motion was made and seconded to approve Institute for Natural Resources as an approved provider for the remainder of the 2008-2010 biennium.

NEWTON/LaTURNER
Motion carried 10-0-0

B. Advanced EndoCare

Board Action: A motion was made and seconded to approved Advanced EndoCare as an approved provider for the remainder of the 2008-2010 biennium.

NEWTON/LaTURNER
Motion carried 10-0-0

XIII. REPORTS

A. Dr. Williams asked the Board if they had any questions, legal issues, or could think of items he missed on his proposed discipline guidelines. He explained the minimum

punishments came from what other states typically do. He chose the most common problems that come before the Board. The IPLA attorney will need to look at it if the Board wants it to be apart of the Board manual. Dr. Burns stated she would like a spreadsheet created which charts past cases and actions taken. Ms. Whitmore inquired about using the rules from Title 828 IAC and not just the statutes.

B. Dr. Catey mentioned the Oral Preventative Assistance (OPA) program. They discussed "direct supervision" and confirmed that it means the doctor must inspect the work done by an employee.

XIV. ASSOCIATION REPORTS

A. Indiana Dental Association

The Association is compiling a press release and mailing a flyer that explains dental hygienists may not perform the procedures which will be in effect on July 1, 2008 by statute until administrative rules have been adopted by the Board. If anyone has any questions or concerns they may contact the Association.

B. Indiana Dental Hygiene Association

The Association advised they are also compiling a flyer to inform practitioners that dental hygienists may not perform the new procedures which will be effect on July 1, 2008 by statute until administrative rules have been adopted by the Board.

XV. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana State Board of Dentistry adjourned at 12:00 p.m.


Jill Burns, D.D.S., President

9-5-08
Date


Galen Williams, D.D.S., Secretary

9/5/08
Date